

JAG CORPS POISED FOR NEW DEFENSE MISSIONS: HUMAN RIGHTS TRAINING IN PERU

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Defense Secretary Aspin has decided to restructure the policy-making apparatus of the Pentagon to direct more attention to new national security concerns such as human rights and to give the department a forceful voice on these issues.¹

assistance to the militaries of several emerging and struggling democracies. Recognizing that law is perhaps the most critical component of a military organization in a democratic state, the JAGC energetically is encouraging the spread of the Clinton Administration's emphasis on the promotion of democracy, human rights, and the rule of law.⁵

I. Introduction

The close of the Cold War caused United States strategy to change from containment to engagement.² The National Command Authority already has cited the dissolution of the Soviet Union as cause for the United States military to expand its traditional role of fighting wars, to new nontraditional roles promoting human rights and the rule of law throughout the world.³ Conceptually, the policy of engagement include activities that promote democratic values, free enterprise, and peaceful behavior between nations.

The new nontraditional military missions associated with engagement include peacekeeping operations, humanitarian interventions, disaster relief missions, counter-drug activities, and nation-building activities. The United States Armed Forces enter the post-Cold War era understanding that fostering democracies and encouraging military establishments subject to the rule of law are vital to United States national security interests.

The Judge Advocate General's Corps (JAGC) demonstrates its commitment to the policy of engagement by providing operational legal advice and support to United States military forces deployed on these new nontraditional missions.⁴ Additionally, Army judge advocates also have provided direct legal

A number of armies and defense ministries have turned to the JAGC to assist them in defining how the law can function properly in their military establishments, and further, how the military itself should fit into a more democratic form of government intent on promoting human rights. The JAGC is answering specific calls for assistance, serving as a forward-based resource capable of advising and responding to a variety of problems confronting many emerging and struggling democracies. This support ranges from supplying basic information on how the United States military adheres to the rule of law, to actually assisting host nation legal officers structure their own legal systems.

In assessing these calls for help, however, the primary concern for United States judge advocates rests with how, over the long term, the host nation's military can be encouraged to accept a reduced and more professional role appropriate to a democracy. Unfortunately, many of the militaries of non-democratic nations have been the chief abusers of human rights. To achieve this long-term goal successfully, two overall themes must be directed toward the host military and appropriate government officials:⁶

- (1) foster greater respect for, and an understanding of, the principle of civilian control of the military; and

¹Jeffrey Smith, *Defense Policy Post Restructured*, WASH. POST, Jan. 28, 1993, at A1.

²See generally DEP'T OF ARMY, *TODAY'S CHALLENGE: TOMORROW'S ARMY II* (Jan. 1993).

³Smith, *supra* note 1, at A4.

⁴See David E. Graham, *Operational Law (OPLAW)—A Concept Comes of Age*, ARMY LAW., July 1987, at 9; Operational Law Note, *Proceedings of the First Center for Law and Military Operations Symposium*, ARMY LAW., Dec. 1990, at 47. To support evolving missions associated with operational deployments better, the Judge Advocate General's Corps developed a new legal discipline in the late 1980s. Termed "operational law," a working definition is "[t]hat body of domestic, foreign, and international law that impacts specifically upon the military operations of U.S. forces in combat and peacetime engagements." INT'L. L. DIV., THE JUDGE ADVOCATE GENERAL'S SCHOOL, U.S. ARMY, JA-422 A17 (May 1992).

⁵To understand the importance of law to a military organization in a democratic society, see RICHARD SIMPKIN, *RACE TO THE SWIFT* 320 (1985). Simpkin's book is about warfare in the 21st century, and he concludes that democracies must find "politico-legal devices" to confront the enemies that threaten today's society. Simpkin states, "Democratic governments rest on the rule of law, and must so rest," and therefore, military actions must conform with the law. *Id.*

⁶See The Foreign Assistance Act of 1961, as amended, 22 U.S.C. § 2347 (West Supp. 1992) (providing the authority for security assistance under the International Military Education and Training (IMET) Program). These two goals are taken from the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1991, tit. II, Pub. L. No. 101-513, 104 Stat. § 1997 (1991).

(2) improve military justice systems and procedures to comport with internationally recognized standards of human rights.

Recognizing that the militaries in many emerging and struggling democracies have a slim frame of reference for properly handling human rights issues, a major focus of the Army JAGC is to promote, strengthen, and assist the host nation's armed forces in institutionalizing human rights training. This concern for human rights mirrors the overall United States national security policy of peacetime engagement by maintaining contacts with allies and friendly governments to impart values and ideals associated with democratic principles.⁷

Requests for help are arriving from countries as diverse as the new republics of the former Soviet Union, to the longer standing, but troubled, democracies of Central and South America. One outstanding example of how Army judge advocates have been involved in the promotion of these vital interests is the current "train the trainer" initiative in Peru.

II. The Peruvian Human Rights Training Initiative

A major obstacle in imparting concepts relating to human rights and democratic principles is that many of these emerging and struggling democracies typically are faced with the social and economic turmoil traditionally associated with low intensity conflict⁸ (LIC) environments, ranging from economic chaos to actual armed insurgency. Consequently, the effectiveness of any assistance program must be measured against the realities associated with the specific LIC problems facing the host nation.

Nowhere in the world do the multiple forces of insurgency, terrorism, and drug trafficking threaten societal order more

than they do in Peru. In the confirmation hearings of Warren Christopher for Secretary of State, Peru was identified as a country vital to United States national security interests and in need of United States assistance. Nevertheless, Peru is a country bitterly engulfed, and almost overwhelmed, with internal threats.⁹

Taking office in 1990, during the middle of a major terrorist siege on his country—primarily sponsored by the Sendero Luminoso and the Movimiento Revolucionario Tupac Amaru¹⁰—Peruvian President Fujimori sought ways to gain and maintain legitimacy for his imperiled government. Working through the United States ambassador, Fujimori sought human rights training for various components of his government. Although initial contacts were made, the political and terrorist situation prevented any training from taking place. Actually, by April 1992, the terrorist offensive had gained such momentum that some analysts were predicting the fall of the government.

Fear and corruption were so great that Fujimori executed an "autocoup" by which he suspended the Constitution, disbanded Congress and most of the judiciary, and began extensive use of the military and the military courts to regain control of the country. Although the autocoup—with the subsequent arrest of Abimael Guzman, the founder and leader of the Sendero Luminoso—actually resulted in bettering the conditions in Peru, the international community's response to President Fujimori's actions was one of general disappointment. The United States Congress stopped virtually all financial and technical assistance until the political situation settled and a new Congress was seated in free elections.¹¹

On the home front, President Fujimori maintained the popular, though not unanimous, support of the Peruvian people. Because the terrorists targeted the general population, most Peruvians accepted any reasonable government action to halt

⁷ This concern exceeds the minimally accepted standards for human rights established by customary international law. International law prohibits genocide, slavery, murder or "disappearance"; torture or other cruel, inhuman, or degrading treatment or punishment, prolonged arbitrary detention, systematic racial discrimination, or any activity that demonstrates a consistent pattern of gross violations of internationally recognized human rights. The United States traditionally has promoted by treaty, declaration, and action the fullest possible range of meaningful human rights. These rights include freedom of religion, freedom of association, freedom of speech, and all of those principles indicative of a truly democratic society. See, e.g., THOMAS BUERGENTHAL, INTERNATIONAL HUMAN RIGHTS (1988).

⁸ See DEP'TS OF ARMY & AIR FORCE, FIELD MANUAL 100-20, MILITARY OPERATIONS IN LOW INTENSITY CONFLICT (Dec. 1989). The term "low intensity conflict" is defined as follows:

Political-military confrontation between contending states or groups below conventional war and above the routine, peaceful competition among states. It frequently involves protracted struggles of competing principles and ideologies. Low intensity conflict ranges from subversion to the use of armed forces. It is waged by a combination of means, employing political, economic, international, and military instruments.

Id.

⁹ Coverage of Senate Confirmation Hearings (C-SPAN television broadcast, Jan. 18, 1993).

¹⁰ See, e.g., Mary Speck, *Caught in Peru's Crossfire*, MIAMI HERALD (Int'l Edition), Dec. 8, 1992, at A1.

¹¹ The government of Peru has had to make some extremely difficult decisions to receive United States aid. Like all countries, Peru is a recipient of United States assistance under the provisions of The Foreign Assistance Act of 1961, Pub. L. No. 187-195 (codified as 22 U.S.C. § 2151 (1988)). This act, however, prohibits United States security assistance to countries that "engage in a consistent pattern of gross violations of internationally recognized human rights." See 22 U.S.C. § 2304 (a)(2-3)(1988).

the killings.¹² President Fujimori had to find the proper balance between maintaining control, and not allowing his government forces to cross the line of excessive behavior.

Strong, swift retribution by government officials, whose families often had been the target of attack, was an understandable reaction, but one that caused extensive debate both in Peru and in the international community. While the government of Peru intensified a series of concrete initiatives to combat the terrorist threat, the Peruvian military acknowledged that the natural temptation for the soldiers to respond in kind to terrorist brutality had to be halted. The behavior not only was counterproductive to maintaining the full support of the people, but also the international image of the Peruvian military suffered. Foremost in Peru's fight for survival was maintaining the legitimacy of the Peruvian government, wherein true democracy would have a chance to endure. A major step in remedying the legitimacy issue was to inculcate human rights and law of armed conflict training into its armed forces.

As the situation in Peru stabilized, the Peruvian military sought United States military assistance in a human rights initiative for its armed forces. Working through the military assistance and advisory group in Lima, Peru, the Commander in Chief, United States Southern Command (SOUTHCOM) offered to provide assistance out of his initiative funds.¹³ In turn, the SOUTHCOM Staff Judge Advocate asked the International and Operational Law Division, Office of The Judge Advocate General (OTJAG), if it could conduct a human rights training mission in Peru. Ultimately, the International and Operational Law Division joined with the International Law Division at The Judge Advocate General's School (TJAGSA) to develop and execute a human rights plan consisting of five phases.

A. Phase I: Developing a Concept Plan

The first phase of the concept plan called for a site survey in Peru. In August of 1992, two United States Army judge advocates traveled to Lima, Peru, to discuss the overall human rights situation with their Peruvian counterparts. While the Peruvians expressed a desire to receive human rights instruction, little, if any, standardized methodology existed to teach human rights to its soldiers. No military legal facility designed and equipped to train Peruvian judge advocates and commanders in these specialized legal areas existed. In addition, the investigative process for soldiers accused of human rights abuses apparently was deficient.

Clearly, Peruvian soldiers in the field had to be given meaningful human rights training if they were expected to cope better with the abuses of terrorists, and if they were to be held accountable when violations occurred. Furthermore, this

training had to be institutionalized into the Peruvian military system so that human rights training would be a continuous requirement for all soldiers. The normal route of sending a United States mobile training team to Latin America—which usually involved a “one shot” course on a particular topic—would be inadequate to institutionalize the lessons necessary to achieve minimal international human rights standards. Cultural, language, and social barriers suggested that the best chance for success would be for Peruvian instructors to deliver the actual subject matter presentations.

After extensive meetings with representatives from each of the Peruvian services, including The Judge Advocate General of the Peruvian Army, a joint concept plan was formulated. This plan was designed to teach Peruvian judge advocates “how to teach” human rights and then to assist those same individuals in developing lesson plans that they could use to present human rights classes throughout the Peruvian military. In this manner, human rights training would be taught by Peruvian instructors and institutionalized into the Peruvian military. Simply put, the theme would be to “train the trainers.”

B. Phase II: Training at TJAGSA

Six Peruvian military judge advocates—two each from the Peruvian Army, Navy, and Air Force—traveled to TJAGSA, in Charlottesville, Virginia, for a two-week period in October and November of 1992. During these two weeks, the Peruvian judge advocates entered into an extensive working relationship with judge advocates from the United States Army, Air Force, and Navy. The purpose of this working relationship was twofold. First, the Peruvians were assisted in developing a comprehensive human rights training program of instruction that would be used to present a week-long human rights course for a broad based Peruvian audience. A Spanish language deskbook was developed, covering topics such as human rights, law of armed conflict, international law, and criminal investigations, and which contained key documents in these areas. The second purpose was to train the Peruvians how to teach these classes effectively. These officers would form the nucleus of a permanent pool of Peruvian instructors who then would teach human rights throughout their armed forces.

C. Phase III: Teaching the First Peruvian Class

The third phase of the plan took place from 15 through 19 December 1992. The Peruvian instructors used the human rights deskbook developed at TJAGSA during Phase II to provide a four-day human rights training course in Lima, Peru. The course was taught by the same Peruvian judge advocates who attended Phase II in Charlottesville, Virginia, assisted by two United States Army judge advocates and one Air Force judge advocate. Approximately fifty participants, consisting of field commanders and their judge advocates,

¹²In their efforts to coerce the populace into submission, the terrorists regularly bombed crowded places, destroyed power plants and public utilities, and publicly executed government officials. The Senderos's calling card is torture and mutilation of victims, accompanied with the slaughtering of dogs that are booby trapped and then hung on lamp posts throughout the local community.

¹³10 U.S.C. § 166(a) (1988).

attended this course.¹⁴ The goal of this training course was not only to provide human rights instruction to senior military commanders, but also to provide the Peruvian judge advocates their "baptism under fire" in presenting these materials to an audience of their peers.

Five Peruvian instructors led the course, which consisted of platform instruction and seminars. They presented the material and handled the logistics of the conference in an exceptional manner. The Peruvian instructors quickly took charge of the various seminars, divided the participants into five "joint" groups, and then led individual group discussions. Phase III was a complete success. The Peruvian instructors clearly demonstrated that they were fully capable and desirous of conducting subsequent human rights training.

All of the attendees actively participated in the course and seminars, engaged in the question and answer sessions, and, most notably, carried on animated discussions following the daily classes. The reporting and investigating requirements of alleged human rights abuses sparked particular interest. The overwhelming acceptance of the material presented by the instructors strongly indicated the Peruvians' genuine interest in human rights issues.

D. Phase IV: Tailoring the Human Rights Courses

Prompted by the success of the Phase III training course, the Peruvians wanted to develop separate one-day course outlines for presentation to three distinct groups in the Peruvian military—junior enlisted soldiers, noncommissioned and junior officers, and judge advocates. Accordingly, several Peruvian judge advocates spent the next two months designing this project. The extensive course deskbook used during Phase III served as the catalyst for developing a standardized set of materials tailored for each of the three target groups. In addition, this deskbook was sent to each of the military academies and service schools in Peru as a guide for revamping training at those institutions.

In February of 1993, two Peruvian judge advocates returned to TJAGSA and, relying on their work products and assistance from United States judge advocates, produced several programs of instruction—one for each of the target audiences. The course and pamphlet directed at the junior enlisted soldiers is noteworthy; because many enlisted soldiers in the Peruvian Army are not able to read, the pamphlet and instruction rely heavily on visual aids. This pamphlet entitled "The Ten Commandments of Human Rights," lays down easy to understand rules and guidelines for those soldiers most likely to encounter situations when human rights violations occur. The visual aids capture the essence of the main teaching points, and the back cover of the pamphlet contains a tear away card to be used as a "human rights ROE card."

The programs of instruction for the junior enlisted soldiers and officers contain common characteristics. The instruction

stresses adherence to the rule of law. Civilian control of the military, and the military's role in a democratic society are central themes to the instruction. The development of human rights and the relation of human rights concerns with the law of war are discussed thoroughly. Finally, the "bottom line" is explained—that is, the rights and responsibilities of individuals in a democratic society; the duties of soldiers, commanders, police and other government officials in relation to human rights; and the international, regional, and domestic minimally accepted human rights standards.

These three instruction programs give Peru the tools to institutionalize human rights training into the very fabric of its armed forces. What remains, is to implement the programs at the troop level.

E. Phase V: Human Rights Training in the Field

The final phase of the concept plan will take place in the Spring of 1993. Two United States Army judge advocates will accompany the Peruvian instructors as the instructors deliver one-day courses throughout Peru. This phase will culminate the plan, after which the Peruvian judge advocates will assume the full duties of delivering, improving, and continuing the human rights program.

The apparent success of the United States efforts in Peru must be tempered with the realization that human rights training can be effective only to the degree that it is inculcated into the psyche of the Peruvian military. At a minimum, the Peruvians must now have three standardized human rights training programs of instruction that are truly their own. The Peruvians now must continue the effort. The strategy to keep the United States' role as that of a "helper," and not as an overseer, has paid tremendous dividends. If the Peruvian military is successful, the success will be attributable to its commitment in continuing to teach human rights. Teaching and training must go hand-in-hand with investigating abuses and holding the responsible parties accountable.

III. Conclusion

The Peruvian human rights initiative is a model for the future. While the traditional concept of military might is absolutely necessary to ensure the protection of ideals related to human rights and the rule of law, the United States' strongest asset always has been the export of those ideals to the rest of the world. In the post-Cold War era, what better use of our military resources exists than promoting respect for human rights by uniformed soldiers, trained in the law, who demonstrate that a strong military can operate under civilian control?

While one never may know how many lives are saved by the efforts of the United States Army JAGC, the tremendous potential for good certainly exceeds the minimal costs. United States Army lawyers already are educated and trained in these

¹⁴ All three armed services were represented, as well as senior police officials, representatives from the Attorney General's office, the Director of Human Rights, and many line officers assigned to the "emergency zones."

areas, judge advocates are deployed forward throughout the world, and by engaging receptive host nations with these concepts, their efforts will accrue synergistic effects that benefit other vital interests. Undoubtedly, alliances and personal contacts will be developed, democratic ideals and the rule of law will be promoted, and the subordination of the military to civilian control will be advanced.

The concept of training the trainer places the cost and the reward where it belongs—on the host country. If the initiative is successful, it is because the host nation takes the program on as its own and gives it sufficient resources to continue. If it fails, the United States should not be faulted for trying.¹⁵ The Peru initiative should be emulated for its simplicity, its focus, and its potential for impact throughout the world.

The post-Cold War era shines with a renewed hope for lasting peace and commitment to human rights; the central theme resting in the promise of a new world order based on the rule of law. One of those rare moments in history now exists when a window of opportunity has opened for the world to make substantial and lasting strides towards controlling aggressive warfare and significantly improving the condition of humanity.

¹⁵"If you give a man a fish you feed him for a day; if you teach a man how to fish, you feed him for a lifetime." The United States cannot give fish, or human rights instruction, on a continued basis to every country in the world. The United States, however, can engage countries on a case-by-case basis for short periods of time, and share with them materials that have proven beneficial in the teaching of human rights, civilian control of the military, and the rule of law.

¹⁶See DIETRICH SCHINDLER & JIAI TOMAN, *THE LAWS OF ARMED CONFLICT* (1988). The law of armed conflict is drawn from several sources including international agreement, custom and practice, judicial decision, and general principles of law.

The defense ministries of countries seeking assistance in creating a law-based military establishment look to the United States for two reasons. First, the United States military emerged from the Cold War as the foremost power in the world—a power that possesses the capability to influence change. Second, countries recognize that the United States Armed Forces have functioned superbly under a rule of law—whether in the realm of respecting the law of armed conflict¹⁶ or in providing a workable and fair system of law for soldiers.

In the larger picture, the end of the largest totalitarian system the world has ever known—the Soviet Union and the Warsaw Pact—offers a unique opportunity for mankind to advance the rule of law and respect for human rights. The world now looks to the United States to provide moral and political leadership, and the United States is stepping up to meet the challenge. As a part of that movement forward, we are using United States military attorneys as vehicles to achieve goals and programs that are fundamental to our national security—promotion of the rule of law and human rights throughout the world.

CLE NEWS

1. Resident Course Quotas

Attendance at resident (Continuing Legal Education) CLE courses at The Judge Advocate General's School (TJAGSA) is restricted to those who have been allocated student quotas. Quotas for TJAGSA CLE courses are managed through the Army Training Requirements and Resources System (ATRRS), the Armywide automated quota management system. The ATRRS school code for TJAGSA is 181. **If you do not have a confirmed quota in ATRRS, you do not have a quota for a TJAGSA CLE course.** Active duty service members must obtain quotas through their directorates of training or through equivalent agencies. Reservists must obtain quotas through their unit training offices or, if they are nonunit reservists, through ARPERCEN, ATTN: DARP-OPS-JA, 9700 Page Boulevard, St. Louis, MO 63132-5200. Army National Guard personnel should request quotas through their unit training offices. To verify a quota, ask your training office to provide you with a screen print of the ATRRS R1 screen showing by-name reservations.

2. TJAGSA CLE Course Schedule

1993

5-9 April: 4th Law for Legal NCO's (512-71D/E/20/30).

12-16 April: 117th Senior Officer Legal Orientation Course (5F-F1).

12-16 April: 15th Operational Law Seminar (5F-F47).

20-23 April: TJAG's Reserve Component Annual CLE Workshop (5F-F56).

26 April-7 May: 131st Contract Attorneys Course (5F-F10).